IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 20854 of 2007(G)

ID.19/2003 of LABOUR COURT, KOLLAM

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PETITIONER:

KEERIKKADU COIR VYAVASAYA CO-OPERATIVE SOCIETY LTD.NO.107, KEERIKKADU SOUTH,KAYAMKULAM PO

BY ADV. SRI.B.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS:

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1. LABOUR COURT, KOLLAM.

2. G. SUSEELA,
THRIPPOORAKAM HOUSE, KEERIKKADU SOUTH,
KAYAMKULAM P.O.

BY GOVERNMENT PLEADER SRI. I.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.20854 of 2007

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Dated this the 6th day of July, 2007

J U D G M E N T

The management in I.D.No.19/2003 before the Labour Court, Kollam, challenges Ext.P3 award passed by the Labour Court in that I.D., by which the order of dismissal of the 2nd respondent by the management was set aside and the workman was directed to be reinstated with 60 per cent back-wages and attendant benefits from 31.3.2000.

2. The issue referred for adjudication was:

> "Whether the dismissal of Smt.G.Suseela, Secretary from service with effect from 31.3.2000 by the management of Keerikkadu Coir Vyavasaya Co-operative Society Ltd. No.107, Keerikkad South, Kayamkulam is justifiable? If not the relief entitled to her"

3. Since the workman was dismissed after conducting an enquiry, the validity of the enquiry was considered as a preliminary point and the Labour Court found that the enquiry was vitiated for violation of the principles of natural justice. Thereafter, although opportunity was given to the

management to adduce evidence to prove the misconducts of the 2nd respondent, the management did not adduce any fresh evidence. It is under the above circumstances that the impugned award was passed.

4. The contention raised by the petitioner-management is that the 2nd respondent workman being a Secretary of the Society is not a workman as defined in the Industrial Disputes Act. However, I am not inclined to consider that contention now because, apart from raising that contention in the written statement, the petitioner-management has not done anything to prove the same before the Labour Court. The only witness examined by the management before the Labour Court was the enquiry officer and the only document produced was the enquiry report and proceedings thereof. Absolutely, no evidence whatsoever has been produced to prove the duties and functions of the 2nd respondent-workman to show that either he was working in a managerial capacity or in a supervisory capacity.

5. The learned counsel for the petitioner relies on the decision of a Division Bench of this court in *K.M.Ulahannan v. Labour Court and anr*. reported in 1996 (1) KLJ 825, to support the contention that Secretary of a society is exercising managerial functions and therefore is not a workman. It is settled law that designation as such is not conclusive of the fact as to whether or not a person is in a managerial or supervisory capacity and that it entirely depends on the duties and functions which are exercised by the workman. Since, in this case, the management has not even attempted to prove the duties and functions of the workman concerned, I do not find any merit whatsoever in the contention now raised by the management.

6. The management also feebly contended that the preliminary order of the Labour Court setting aside the enquiry is perverse. But I find that the management did not strain much to support the validity of the enquiry. In the cross-examination

of the enquiry officer, he himself admitted that no charge sheet was issued by the management to the workman and it was the enquiry officer who framed charges based on the documents produced by the management and enquiry was conducted on those charges. It has also been proved that the workman was not supplied with copies of documents or witness-list. That being so, I do not find any perversity in the findings of the Labour Court holding that the enquiry is vitiated for violation of principles of natural justice.

The result of the above discussion is that I am unable to find anything perverse in the award of the Labour Court. In fact I feel that the Labour Cort was lenient in the matter of granting reliefs in so far as only 60 per cent of the back-wages has been awarded to the workman. In the above circumstances I do not find any merit the writ petition and accordingly the same is dismissed.

sdk+ S.SIRI JAGAN, JUDGE